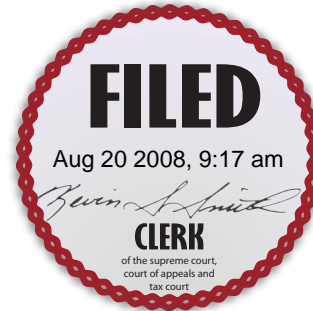


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

FRED WINFIELD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0802-CR-144

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Barbara Collins, Judge

The Honorable Jeffrey Marchal, Commissioner

Cause No. 49F08-0711-CM-248572

August 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Fred Winfield challenges the sufficiency of the evidence supporting his conviction for carrying a handgun without a license,¹ a Class A misdemeanor. When reviewing the sufficiency of the evidence, we do not reweigh evidence or assess credibility, but only consider evidence favorable to the verdict and the reasonable inferences therefrom and affirm if the evidence and inferences allow a reasonable fact-finder to find a defendant guilty beyond a reasonable doubt. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

The State was required to show that Winfield had actual or constructive possession of the handgun. *Deshazier v. State*, 877 N.E.2d 200, 204 (Ind. Ct. App. 2007). Constructive possession is shown by the intent and capability to maintain control over a handgun. *Id.* at 205. Proof of dominion and control over a handgun is established through evidence such as flight, proximity of the firearm to the defendant, and location of the firearm within the defendant's plain view. *Id.* at 206.

Here, Indianapolis Police Officers were patrolling near a vacant house known for open-air narcotics dealing and firearm violations. Officers noticed three individuals and approached. As they approached, two men, including Winfield, ran away. An officer followed them and saw the men lying on the ground. Within ten to fifteen feet of Winfield was a handgun lying on top of some leaves, with fresh dirt on it, as if it had been thrown. Winfield was substantially closer to the gun than the other man. Sufficient evidence existed supporting his conviction.

Affirmed.

VAIDIK, J., and CRONE, J., concur.

¹ See IC 35-47-2-1.